**PRE-APPEAL BRIEF REQUEST FOR REVIEW**Docket Number (Optional)
42390P11391

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on September 28, 2005.

Signature

Typed or printed
name Theresa Belland

Application No.

09/895,344

Filed

June 29, 2001

First Named Inventor

Avraham Mualem

Art Unit

2136

Examiner

Eleni A. Shiferaw

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

NOTE: No more than five (5) pages may be provided.

I am the:

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under of 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☒ Attorney or agent of record.
Registration Number 54,962
- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

Signature

Vincent H. Anderson

Typed or printed name

(503) 439-8778

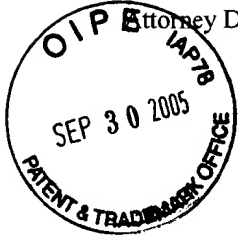
Telephone Number

September 28, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required.

☐ *Total of _____ forms are submitted.



Attorney Docket No.: 42390P11391

PATENT

**PRE-APPEAL BRIEF REQUEST FOR REVIEW
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:)	
)	Examiner: Eleni A Shiferaw
Mualem et al.)	
)	Art Unit: 2136
Application No: 09/895,344)	
)	
Filed: June 29, 2001)	
)	
For: INTELLIGENTLY DETERMINING)	
WHICH TRAFFIC STREAMS TO)	
OFFLOAD EFFICIENTLY)	

Mail Stop AF

Assistant Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the Advisory Office Action mailed September 15, 2005, and in conjunction with the Notice of Appeal filed concurrently herewith, Applicants respectfully request review of the Final rejection of the claims of the above referenced application in view of the following.

I hereby certify that this correspondence is being deposited with the United States Postal service as first class mail on the below date with sufficient postage in an envelope addressed to:
Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

Signature Theresa Belland 9/28/05
Theresa Belland Date

Claims 1, 11, 21, 31, and 41 are the independent claims pending in the above-referenced patent application, and are the subject of this Request. The Advisory Action mailed September 15, 2005 (the Advisory Action) maintained the Final rejection of these claims under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0062333A1 of Anand et al. (*Anand*) in view of U.S. Patent No. 6,697,334 of Klincewicz et al. (*Klincewicz*), as set forth in the first Office Action mailed January 13, 2005 (the first OA) and the Final Office Action mailed June 28, 2005 (the Final OA). Collectively one or more of the first OA, the Final OA, and/or the Advisory Action may be referred to as the Office Actions. Applicants have consistently maintained that the Office Actions have failed to set forth a prima facie case of obviousness under MPEP § 2143 at least for failing to set forth each and every element of the claimed invention, and that the cited references fail to support an obviousness rejection of the claims at least because they fail to set forth at least one element of the invention as recited in the independent claims.

Claims 1, 11, 21, 31, and 41 recite "associating a metric value with the security association." Claims 1, 11, 21, and 31 further recite "modifying the metric value based on an amount of network traffic generated for the traffic stream." Claim 41 further recites "initializing the metric value to a predetermined value when a security association is received by a driver agent."

In the Office Actions, *Anand* was cited as disclosing associating a metric value with a security association. As set forth in Applicants' Response After Final filed August 29, 2005 (the Response AF) as well as Applicants' Response filed April 13, 2005 (the first Response), *Anand* fails to disclose or suggest a metric value. Furthermore, *Anand* fails to disclose or suggest a

security association. Furthermore, *Anand* fails to disclose or suggest associating a metric value with a security association.

Anand discusses the offloading of operations from the CPU to other hardware. See [0012] to [0014]. The cited reference discusses that certain operations, such as encryption/decryption, are "CPU intensive operations" and therefore can be offloaded for hardware other than the CPU to perform. See [0014]. The Final OA asserts that the indication of "encryption/decryption" is a metric value as recited in the claimed invention. Applicants note that the reference fails to support such an assertion. In the reference, "encryption/decryption" refers to one of the layers of the network, and a data packet that is tagged with a particular layer will be so processed. See [0014]. No metric is used to determine that an operation is "CPU intensive." All encryption/decryption operations are pre-classified in the system as being CPU intensive, and so will be offloaded. According to the reference, any time the operation is selected it will be offloaded, without any consideration of network traffic or any consideration of a metric value. The "heaviness or intensiveness" of encryption/decryption is not described in the reference as having an associated metric, or having any association with network traffic. Thus, Applicants submit that it is an unreasonable interpretation of the reference to assume that a tag referring to a layer of the network protocol is a metric value.

Furthermore, even assuming that tagging a data packet, as described in the reference, for processing by a particular layer, or even offloading operations for a particular layer as discussed in [0017], which Applicants maintain would be inappropriate, the reference fails to disclose or suggest a security association. The Final OA and the Advisory Action assert that offloading the encryption to the NIC (i.e., offloading the CPU-intensive operations to other hardware) discloses a security association. Applicants are unable to understand how a security association is

explicitly or inherently implied in operation offload. The Office Actions fail to provide any explanation of how a security association is purportedly explicitly or inherently implied.

Applicants submit that the reference fails to support the assertions in the Office Actions.

Furthermore, even assuming the reference could be interpreted as disclosing a security association, which Applicants maintain would be improper, the reference fails to disclose or suggest that a metric value is associated with a security association. Seeing that no metric is disclosed, and no security association is disclosed, there can be no disclosure of associating such items. Additionally, the features of the reference asserted in the Office Actions as disclosing the metric value refer to data packets, not security associations. See, e.g., [0014]. Thus, a data packet may be tagged for the particular operations, but no mention is made of associating a metric with a security association, in contrast to the claimed invention.

Furthermore, *Klincewicz* was not cited for curing any of the deficiencies noted above, and indeed does not cure the deficiencies of *Anand* in regard to disclosing associating a metric value with a security association. *Klincewicz* is cited as disclosing modifying a metric value based on network traffic. *Klincewicz* discusses design of a network that supports QoS, and recites various kinds of information (called "input data") that might be used to classify a packet for QoS purposes. See col. 5, lines 22 to 53. The reference states that "input data may be entered by the designer using the input devices 110. The input data may additionally be read from a file located in the database 150." Col. 5, lines 33 to 35. Thus, the reference discusses using stored information in the design of a network to determine how to classify a packet, which is in contrast to the teachings of *Anand* that discusses concepts of **dynamic** offloading, and which is also in contrast to the claimed invention that recites modifying the metric value **based on an amount of network traffic generated for an associated traffic stream**.

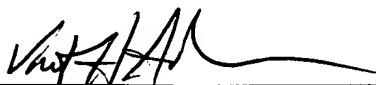
The Final OA and Advisory Action appear to be relying on *Klincewicz*'s mention of "link lengths" as disclosing modifying a metric value. Links are mentioned at col. 5, lines 56 to 57 as a connection between elements in a network. The link length is defined at col. 6, lines 31 to 34 as "a value assigned to a link that quantifies how desirable the link is for routing traffic." Importantly, the "link length" is specifically associated with a **link**, as defined above, and fails to support an interpretation of a metric being associated with a security association. The link, as described in col. 6, lines 7 to 20, may include many different channels and many different traffic classes. Thus, the metric referred to in the reference applies to a link as a whole between network elements, and has no suggestion of applicability to a specific security association, which is associated with traffic, and not with a specific physical link. The discussion of bandwidth sizing, traffic routing, and delay allocation as discussed in the Advisory Action fail to overcome the deficiencies pointed out above.

U.S. Patent No. 6,209,101 of Mitchem et al. (*Mitchem*) is also cited against claim 41, but fails to cure the deficiencies of the other references.

Although each reference is disclosed alone, the combination of the references is equally unsuccessful in supporting an obviousness rejection of the claimed invention. Therefore, Applicants submit that the Final OA fails to set forth a prima facie case of obviousness and so fails to base its rejection upon supportable evidence from the cited references.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: 9/28/05



Vincent H. Anderson
Reg. No. 54,962

12400 Wilshire Blvd., 7th Floor
Los Angeles, CA 90025-1026
Telephone: (503) 439-8778